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DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA-2014-0019]

Notice of Proposed Buy America Waiver for the Pad and Rubber Boot of a Concrete Block Used in New York City Transit South Ferry Station's Low Vibration Track System

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of proposed Buy America waiver and request for comment.

SUMMARY: New York City Transit (NYCT), an agency of the Metropolitan Transportation Authority (MTA), has requested a Buy America waiver for the procurement of pads and rubber boots of a concrete block used in its Low Vibration Track (LVT) system on the basis of non-availability. The procurement for the pads and rubber boots are part of the South Ferry Station project. This notice is to inform the public of the waiver request and to seek public comment to inform FTA's decision whether to grant the request. If granted, the waiver would be limited to this one procurement for the South Ferry Station project. The waiver would be conditioned upon the requirement that NYCT must complete the safety testing of U.S.-manufactured pads and rubber boots necessary to meet its specifications within the timeframe provided herein, and to substitute U.S.-manufactured pads and rubber boots for the foreign-made pads and rubber boots to the extent possible.

DATES: Comments must be received by [INSERT DATE 7 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Please submit your comments by one of the following means, identifying your submissions by docket number FTA-2014-0019:

1. Web site: <http://www.regulations.gov>. Follow the instructions for submitting comments on the U.S. Government electronic docket site.
2. Fax: (202) 493-2251.
3. Mail: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Docket Operations, M-30, West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.
4. Hand Delivery: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Docket Operations, M-30, West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must make reference to the “Federal Transit Administration” and include docket number FTA-2014-0019. Due to the security procedures in effect since October 2011, mail received through the U.S. Postal Service may be subject to delays. Parties making submissions responsive to this notice should consider using an express mail firm to ensure the prompt filing of any submissions not filed electronically or by hand. Note that all submissions received, including any personal information therein, will be posted without change or alteration to <http://www.regulations.gov>. For more information, you may review DOT’s complete Privacy Act Statement in the Federal Register published April 11, 2000 (65 FR 19477), or you may visit <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Mary J. Lee, Attorney-Advisor, at (202) 366-0985 or mary.j.lee@dot.gov.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to provide notice and seek comment on whether FTA should grant a non-availability waiver for the procurement of the

pad and rubber boot of the concrete block used in NYCT's LVT system for the South Ferry Station Project.

With certain exceptions, FTA's Buy America requirements prevent FTA from obligating an amount that may be appropriated to carry out its program for a project unless "the steel, iron, and manufactured goods used in the project are produced in the United States." 49 U.S.C. 5323(j)(1). A manufactured product is considered produced in the United States if: (1) the manufacturing processes for the product take place in the United States; and (2) the components of the product are of U.S. origin. A component is considered of U.S. origin if it is manufactured in the United States, regardless of the origin of its subcomponents. 49 CFR 661.5(d). If, however, FTA determines that "the steel, iron, and goods produced in the United States are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality," then FTA may issue a waiver (non-availability waiver). 49 U.S.C. 5323(j)(2)(B); 49 CFR 661.7(c).

On March 21, 2014, FTA granted a waiver for the pad and the rubber boot to MTA Capital Construction Company, a construction management company for MTA expansion projects that is responsible for managing NYCT's Second Avenue Subway (SAS) Project. This waiver was limited to Phase 1 of the SAS Project and in granting the waiver FTA expressed its expectation that MTA would continue its good faith efforts to seek U.S. manufacturers of the pad and rubber boot. On April 29, 2014, FTA followed up with a letter and reiterated its expectations that MTA continue to seek U.S.-manufactured pads and rubber boots and provided its findings on potential U.S. manufacturers.¹

¹ FTA leveraged the resources of the U.S. Department of Commerce, National Institute of Standards and Technology (NIST), through an interagency agreement currently in place, and had NIST conduct a supplier scouting resulting in a report completed by NIST of potential U.S.-manufacturers for the pad and rubber boot.

On July 14, 2014, NYCT requested another Buy America waiver for the pads and rubber boots to be procured for its South Ferry Station project. While NYCT has been conducting its own searches for U.S. manufacturers to find a U.S.-made pad and rubber boot, and Construction Polymers Technologies, Inc. (CPT) -- the manufacturer for the concrete block for which the pad and rubber boot are components -- has found U.S. manufacturers, NYCT asserts that safety testing of U.S.-manufactured pads and boots must be conducted before they can be used in NYCT's LVT system. NYCT represents that all of the necessary testing that it must undertake with respect to new and untested items such as the pad and the boot will take approximately three months after CPT conducts its own testing and produces its results. FTA has been informed that CPT expects to produce its test results to NYCT on or about September 15, 2014. Accordingly, because of the timing of the contract award, which NYCT anticipates will occur by the end of September 2014, as well as the construction schedule, NYCT has requested a waiver. If the waiver is not granted, NYCT asserts that there would be no Buy America compliant items that also meet its safety specifications, which cannot be waived.

The purpose of this notice is to publish the waiver request and seek public comment from all interested parties in accordance with 49 U.S.C. 5323(j)(3)(A). Comments will help FTA understand completely the facts surrounding the request, including the effects of a potential waiver and the merits of the request. If the waiver is granted, it would be limited to a single procurement for the South Ferry Station Project and conditioned upon NYCT completing the safety testing for the U.S.-made pad and rubber boot within approximately three months of receipt of CPT's test results, which is expected on or about September 15, 2014. In addition, once all of the testing is complete within the aforementioned timeframe and if the testing confirms that the U.S.-made pad and rubber boot meet NYCT's safety specifications, FTA expects NYCT to substitute the U.S.-made pads and rubber boots for the foreign-made items to the extent possible. A full copy of the request has been placed in docket number FTA-2014-0019.

Dana Nifosi
Acting Chief Counsel

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